

ST 98-21

Tax Type: SALES TAX

**Issue: Disallowed Resale Deduction (No Valid Certificates)
Sales v. Resale Issues
Audit Methodologies and/or Other Computational Issues**

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

v.

**ABC, Inc.,
Taxpayer**

**No.
IBT No.
NTL Nos.**

**Charles E. McClellan
Administrative Law Judge**

RECOMMENDATION FOR DECISION

Appearances:

Mark Dyckman, Special Assistant Attorney General, for the Illinois Department of Revenue;
Jerome Wiener and Brian L. Wolfberg of Schain, Firsell & Burney, Ltd., for the taxpayer.

Synopsis:

This matter involves Notice of Tax Liability Nos. #1 and #2 ("NTLs") issued to ABC, Inc. ("taxpayer") by the Department on December 22, 1995. NTL #1 involves the periods beginning June 1, 1991 through November 30, 1993. NTL #2 involves the periods beginning December 1, 1993 through December 31, 1993.

A pre-trial order was entered on December 11, 1996, setting forth the issues in the case as follows:

1. Whether the transactions at issue (*i.e.* the sales transactions included in the sample, which is the basis for the tax liability calculation) are exempt sales for resale;
2. Whether certain resale certificates provided were valid;
3. Whether the audit properly assessed transactions involving consignment sales, returns and bad debts.

An evidentiary hearing was held on July 15, 1997, and continued to July 16, 1997, when it was concluded. Prior to the hearing, the parties entered into a joint stipulation (Stip.). They also entered into a supplementary stipulation (Stip. II) after the hearing. Four exhibits are attached to the stipulation listing the sales invoices selected by the Department's auditor for the test check on which the NTL is based. The parties sorted the invoices into four categories that classify the transactions as being taxable or nontaxable sales for resale. In the first stipulation, the parties reduced the number of transactions at issue which were determined by the auditor not to be exempt sales for resale. In the second stipulation, Stip. II, the parties set forth the factual stipulations agreed to during the hearing.

The parties further reduced the number of transactions at issue in their post-hearing briefs. In its brief, the Department grouped all of the transactions remaining at issue after the first two stipulations into four categories numbered 1 through 4. In taxpayer's reply to the Department's brief,¹ the taxpayer conceded as being taxable (*i.e.*, not sales for resale) the transactions listed in categories 1 and 2 in the Department's brief, leaving only those transactions in categories 3 and 4 of the Department's brief at issue.

Taxpayer did not address issue number 3 at the hearing or in its brief.

I recommend that the sample on which the deficiency calculations are based be adjusted to exclude the transactions set forth in the stipulations as being sales for resale and the

transactions determined as a result of the hearing to be sales for resale. As so adjusted the NTLs should be made final.

Finding of Fact:

1. The Department's auditor listed certain sales invoices from the period October through December of 1991 as being sales at retail rather than sales for resale. (Tr. pp. 13, 14; Stip. ¶ 1; Stip. Ex. No.1)

2. The Department's auditor listed certain sales invoices for the month of December of 1993 as being sales at retail rather than sales for resale. (*Id.*)

3. The parties agreed prior to the pre-trial conference that certain sales transactions listed on Stip Ex. No. 2 should be stricken from the taxable exceptions. (Tr. p. 14, Stip. ¶ 2, Stip. Ex. No. 2)

4. After the pre-trial conference, the taxpayer provided additional documentary evidence sufficient to show that the sales transactions listed on Stip. Ex. No. 3 should be stricken from the list of taxable exceptions. (Tr. p. 14, Stip. ¶ 2, Stip. Ex. No.3)

5. The transactions listed on Stip. Ex. No. 4 are the transactions that remain at issue when the hearing began. (Tr. p. 15, Stip. ¶ 4, Stip. Ex. No. 4)

6. During the hearing the Department conceded that certain additional transactions were exempt sales for resale. (Stip. II)

7. The dollar amounts shown on Stip. Exs. No. 1 through 4 are the amounts corresponding to the invoices audited by the Department. (Stip. ¶ 5)

8. Mr. JOHN DOE ("DOE") is the principal of ABC, Inc. (Tr. p. 6)

¹ Taxpayer's Reply to Department's Post-Hearing Brief, p. 1.

Conclusions of Law

Issues No. 1 & 2

Both parties filed post hearing briefs. In its brief, the Department sorted the remaining transactions at issue into four categories. In its reply, the taxpayer conceded that the sales transactions listed in categories 1 and 2 of the Department's post trial brief are taxable. Accordingly, the first two issues are reduced to determining whether the transactions at issue (*i.e.*, the transactions listed in categories 3 and 4 in the Department's post hearing brief) are exempt sales for resale.

Under Section 7 of the Retailers' Occupation Tax Act ("Act") all sales of tangible personal property are subject to tax until the contrary is established, and the burden of proof in that regard is on the person claiming exemption. 35 ILCS 120/7. Quincy Trading Post v. Dept. of Revenue, 12 Ill. App. 3d 725 (4th Dist. 1973) A statute that exempts property from taxation must be strictly construed in favor of taxation. Wyndemere Retirement Comm. v. Dept. of Rev., 274 Ill. App. 3d 455 (2nd Dist. 1995). In the process of analyzing an exemption, all facts and debatable questions are resolved in favor of taxation. *Id.*

The Act exempts sales for resale in the following two paragraphs:

Except as provided hereinabove in this Section, a sale shall be made tax-free on the ground of being a sale for resale if the purchaser has an active registration number or resale number from the department and furnishes that number to the seller in connection with certifying to the seller that any sale to such purchaser is nontaxable because of being a sale for resale.

Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are sales for resale or that a particular sale is a sale for resale. 35 ILCS 120/2c.

The regulations provide that the seller of tangible personal property must determine whether the purchaser is buying the property for use or consumption or for resale. 86 Admin. Code ch. I, § 130.1401 (a). If a purchase is for resale, the purchaser must provide to the seller its registration or resale number obtained from the Department and a certification that the sale is for resale. *Id.* Except in the case of sales to totally exempt purchasers, when sales for resale are made, the seller should obtain a certificate of resale from the purchaser for the seller's own protection. 86 Admin. Code ch. I, § 130.1405(a). The regulation specifies that a certificate of resale must contain a statement by the purchaser that he is purchasing the property for purposes of resale. *Id.* at ¶ (b) The certificate of resale must contain the name and address of the seller and the purchaser, a description of the items being purchased, the purchaser's signature and date of purchase, and the purchaser's resale or registration number as issued by the Department, or, in the case of an out-of-state purchaser, a statement that the items are being purchased for resale outside of Illinois to purchasers located outside of Illinois. *Id.* If all of a purchaser's purchases are for resale, a blanket exemption certificate may be used. *Id.* at ¶ (c).

Of particular significance to the transactions at issue is the following paragraph in the regulations:

Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are sales for resale, or that a particular sale is a sale for resale. *Id.* at ¶ (d).

The regulations do not specify what "other evidence" is sufficient to rebut the presumption that a sale is not a sale for resale, and there are no cases on point.

The law is clear that in applying the statute to the facts of this case, the burden of proof is on the taxpayer. The Department is required to correct Retailers' Occupation Tax returns

according to its best judgment and information. 35 ILCS 120/4, Central Furniture Mart v. Johnson, 157 Ill.App. 3d 907 (1st Dist. 1987). The admission into evidence of the corrected return at a hearing before the Department or any legal proceeding establishes the Department's *prima facie* case. *Id.*

When a taxpayer claims that it is exempt from a particular tax, or where it seeks to take advantage of deductions or credits allowed by statute, it has the burden of proof. This derives from the fact that deductions and exemptions are privileges created by statute as a matter of legislative grace. Statutes granting such privileges are to be strictly construed in favor of taxation. Balla v. Dept. of Revenue, 96 Ill. App. 3d 293, 295 (1st Dist. 1981).

To overcome the Department's *prima facie* case the taxpayer must present consistent, probable evidence identified with his books and records. Central Furniture Mart v. Johnson, *supra*. Testimony alone is not enough. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill.App.3d 203, (1st Dist. 1991), A.R. Barnes & Co. v. Department of Revenue, 173 Ill. App. 3d 826, 833-34 (1st Dist. 1988), 86 Admin. Code ch. I, § 130.1405 (a). "Documentary proof of tax-exempt status is required to prevail against an assessment of deficiency by the Department." Sprague v. Johnson, 195 Ill. App. 3d, 798, 804 (4th Dist. 1990).

The first group of transactions to consider are the nine listed in category three of the Department's brief as follows:

October through December 1991

\$1,450.94
5,170.24
732.27
909.00
72.00

December 1993

656.70
16.40
103.84
361.00

The evidence presented on behalf of the taxpayer regarding these transactions consists of sales invoices, documents that purport to be blanket resale certificates and the testimony of taxpayer's employees. All of the certificates state that they apply to ". . . all tangible personal property hereafter purchased . . ." They also state that they "shall be considered a part of each order which we shall give, unless such order otherwise specifies." For the reasons indicated below, in each case the evidence of record failed to rebut the presumption that the transactions at issue were not sales for resale.

In the case of JANE DOE there were three invoices dated in October, November and December of 1991. (Taxpayer Group Ex. No. 14) A blanket resale certificate dated June 16, 1993, was also introduced into evidence. (Taxpayer Group Ex. No. 14a) The certificate by its own terms is limited to transactions subsequent the date of its execution which was 1½ years after the sales at issue. JOHN DOE testified that the certificate was executed with regard to the transactions at issue. (Tr. p. 117) However, the Department's records indicate that the resale number of the purchaser shown on the certificate was not issued until June 24, 1993, and it expired on August 24, 1996. (Dept. Group Ex. No. 2) Therefore, at the time of the sales at issue, the purchaser did not have a valid resale number as required by the statute. That being the case, and there being no other evidence that the sales at issue were for resale, the presumption that the sales were not sales for resale is not rebutted.

In the case of MARY DOE (M. DOE), the documentary evidence consisted of 31 invoices all dated in October, November and December of 1991 (Stip. Ex. No.1, Taxpayer Group

Ex. No. 13) and a blanket resale certificate dated July 7, 1992. (Stip. Ex. No.1, Taxpayer Ex. No. 13a) Several of taxpayer's employees testified that this purchaser told them she was making the purchases for resale. (Tr. p. 113) The Department's records indicate that the resale number supplied by the purchaser became active on July 7, 1992 and inactive on December 31, 1992, (Dept. Group Ex. No. 2) so the purchaser did not have a resale number at the time of the purchases as required by the statute. That being the case, and there being no other evidence that the sales at issue were for resale, the presumption that the sales were not sales for resale is not rebutted.

In the case of XYZ COMPANY, the documentary evidence consisted of two invoices dated in October and November of 1991 (Taxpayer Group Ex. No. 16) and an unsigned blanket resale certificate dated October 31, 1991. (Taxpayer Ex. No. 16a). A resale exemption certificate is required to be dated and signed by the purchaser so this one is defective. Nevertheless, taxpayer's employee, Mr. XXXXXX, testified that XYZ COMPANY purchased the items for resale. (Tr. p. 122) The Department's records indicate that the resale number inserted on the resale certificate was issued to an entity named PDQ DESIGNS and that the number was issued on May 1, 1994, (Dept. Group Ex. No. 2) thus proving that the purchaser for XYZ COMPANY did not have a valid resale number at the time of the sales at issue as required by the statute. That being the case, and there being no other evidence that the sales at issue were for resale, the presumption that the sales were not sales for resale is not rebutted.

In the case of RON ROE, the documentary evidence consisted of eight invoices dated in November and December of 1991. (Taxpayer Group Ex. No. 15) and an undated, (and, therefore, defective) blanket resale certificate that does not show the taxpayer's registration number. (Taxpayer Exs. No. 15 and 15a) JOHN DOE testified that ROE purchased the items at

issue for resale. (Tr. p. 119) The Department's records indicate that the resale number inserted on the resale certificate was issued to an entity named ABC VIDEO on June 18, 1991. (Dept. Group Ex. No. 2) There is no testimony or other evidence of record indicating what connection there is, if any, between RON ROE and ABC VIDEO. Since there is no evidence to show that RON ROE had a resale number at the time of the sales at issue, and there being no other evidence that the sales at issue were for resale, the presumption that the sales were not sales for resale is not rebutted.

In the case of LMN Ltd., the documents introduced by the taxpayer consisted of three invoices (Taxpayer Group Ex. No. 28) and an undated blanket exemption certificate indicating that the purchaser is located in Indiana. (Taxpayer Ex. No. 28a) No testimony was offered with regard to these transactions. Because there is no evidence that the purchaser had a valid resale number from the Department, the certificate is not dated and does not state that the purchaser will sell the merchandise only to purchasers located outside of Illinois, it is defective and does not rebut the presumption that the transactions were not sales for resale.

In the case of JOE DOE, the documentary evidence introduced consists of one invoice dated December 4, 1993 (Taxpayer Ex. No. 17) and an undated blanket resale certificate which, therefore, is defective. (Taxpayer Ex. No. 17a) One of taxpayer's employees testified that he filled out the resale certificate at the time of the sale. (Tr. p. 125) The Department's records indicate that the resale number inserted on the resale certificate was issued to JOE DOE on January 31, 1994, (Dept. Group Ex. No. 2) thus proving that the purchaser did not have a valid resale number at the time of the sales at issue as required by the statute. There is no other evidence of record showing that the sale was for resale. For these reasons the presumption that the sale at issue was for resale is not rebutted.

In the case of FICTITIOUS JEWELERS the documentary evidence introduced consists of an invoice dated December 11, 1993 (Taxpayer Ex. No. 19) and a blanket resale certificate dated December 15, 1993. (Taxpayer Ex. No. 19a) The date on the resale certificate indicates it was given to the taxpayer four days after the sale and by its own terms it applies only to transactions subsequent the date of its execution. One of taxpayer's employees testified that she filled out the certificate form on December 15, 1993, except for the signature. The Department's records indicate that the resale number inserted on the resale certificate was issued to Jewelers on June 5, 1989, and that it was voided the same day. (Dept. Group Ex. No. 2) thus proving that the purchaser did not have a valid resale number at the time of the sales at issue as required by the statute. There is no other evidence of record showing that the sale was for resale. For these reasons the presumption that the sale was not a sale for resale is not rebutted.

In the case of JIM DOE the documentary evidence introduced consists of an undated blanket exemption certificate which, therefore, is defective. (Taxpayer Ex. No. 21) No invoice was introduced into evidence. However, the stipulation indicates that the invoice number in issue is 56889 dated December 21, 1993 for \$103.84 and it was disallowed as being a sale for resale by the auditor for lack of a resale certificate. (Stip. Ex. No. 1) The Department's records indicate that the resale number inserted on the resale certificate was issued to JIM DOE'S Imports but was deactivated on October 31, 1986, (Dept. Group Ex. No. 2) thus proving that the purchaser did not have a valid resale number at the time of the sales at issue as required by the statute. There is no other evidence of record showing that the sale was for resale so the presumption that the sale was not a sale for resale is not rebutted.

In the case of SUE DOE the documentary evidence introduced consists of an invoice dated December 11, 1993 (Taxpayer Ex. No. 18) and a blanket resale certificate dated May 28,

1993, showing two purchasers to wit: Tavern and SUE DOE. (Taxpayer Ex. No. 18a) One of taxpayer's employees testified that he knew that SUE DOE was in the business of selling jewelry. (Tr. p. 129) There is no testimony in the record explaining the relationship of Tavern to SUE DOE. The Department's auditor disallowed the transaction as being a sale for resale because the Department's records show a different business name for the registration number used by the purchaser than appears on the invoice and the resale certificate. (Stip. ¶ Ex. No. 1) The Department's records indicate that the resale number inserted on the resale certificate was issued to DEF, Inc. on December 15, 1983 and that it was deactivated on May 23, 1987, (Dept. Group Ex. No. 2) thus proving that the purchaser did not have a valid resale number at the time of the sales at issue as required by the statute. There is no other evidence of record showing that the sale was for resale. For these reasons the presumption that the sale was not a sale for resale is not rebutted.

Category four consists of eighteen transactions as follows:

October through December 1991

\$6,667.11
 2,068.51
 1,471.68
 4,398.09
 12,329.39
 1,482.23
 1,431.17
 3,737.79
 834.63
 7,665.38
 100.86

December 1993

1,335.93
 839.16

108.30
1,285.00
748.88
320.50
715.43

The documentary evidence presented regarding these transactions also consists of sales invoices and documents that purport to be blanket resale certificates. Also, taxpayer's customers testified regarding the transactions at issue. As in the case of the category three transactions, all of the certificates state that they apply to ". . . all tangible personal property hereafter purchased . . ." They also state that they "shall be considered a part of each order which we shall give, unless such order otherwise specifies." For the reasons indicated below, in each case except one, the evidence of record failed to rebut the presumption that the transactions at issue were not sales for resale.

The documentary evidence introduced by the taxpayer in support of the transactions with FICTITIOUS TAXPAYER consists of ten invoices dated in October, November and December of 1991 (Taxpayer Group Ex. No. 4) and an undated, and therefore defective, blanket resale certificate on which the purchaser's address is incomplete. (Taxpayer Ex. No. 4a) FICTITIOUS TAXPAYER testified that she was in the jewelry business in 1991 and that she purchased the items at issue for resale. (Tr. p. 35) The Department's records indicate that the resale number inserted on the resale certificate was issued to FICTITIOUS TAXPAYER on April 8, 1992, (Dept. Group Ex. No. 2) thus proving that the purchaser did not have a valid resale number at the time of the sales at issue as required by the statute. There is no other evidence of record showing that the sales were for resale. For these reasons the presumption that the sales at issue are not sales for resale is not rebutted.

The documentary evidence introduced by the taxpayer in support of the transactions with FICTITIOUS TAXPAYER consists of three invoices dated in October and November of 1991 (Taxpayer Group Ex. No. 6) and an undated and, therefore, deficient blanket resale certificate listing the purchaser as FICTITIOUS TAXPAYER. (Taxpayer Ex. No. 6a) FICTITIOUS TAXPAYER testified that she was in the jewelry business in 1991, (Tr. p. 47) that she purchased the items on the invoices at issue for the purpose of resale and that she did resell them, (Tr. p. 48) and that the blanket resale certificate was given to the taxpayer for the transactions at issue. (Tr. p. 49) The Department's records indicate that the resale number inserted on the resale certificate was issued to a party with a different name, to wit: FICTITIOUS BUSINESS, on July 1, 1992, and that it was revoked on June 15, 1993, (Dept. Group Ex. No. 2) thus proving that the purchaser did not have a valid resale number at the time of the sales at issue as required by the statute. There is no other evidence of record showing that the sales were for resale. For these reasons the presumption that the sales at issue are not sales for resale is not rebutted.

The documentary evidence introduced by the taxpayer in support of the transactions with FICTITIOUS TAXPAYER consists of ten pages of invoices dated in October, November and December 1991 (Taxpayer Group Ex. No. 26) and an undated and, therefore, deficient blanket resale certificate. (Taxpayer Ex. No. 26a) FICTITIOUS TAXPAYER testified that she purchased the items at issue for the purpose of resale. (Tr. p. 162) The Department's records indicate that the resale number inserted on the resale certificate was issued to FICTITIOUS TAXPAYER on February 28, 1992, and deactivated on the same day. (Dept. Group Ex. No. 2) This proves that the purchaser had no valid resale number at the time of the sales at issue as required by the statute. There is no other evidence of record showing that the sales were for

resale. For these reasons the presumption that the sales at issue are not sales for resale is not rebutted.

The documentary evidence introduced by the taxpayer in support of the transactions with FICTITIOUS TAXPAYER consists of five invoices dated in October, November and December of 1991 (Taxpayer Group Ex. No. 8) and a blanket resale certificate dated May 21, 1993. (Taxpayer Ex. No. 8a) FICTITIOUS TAXPAYER testified that she purchased the items at issue for the purpose of resale. (Tr. p. 58) The Department's records indicate that the resale number inserted on the resale certificate was issued to FICTITIOUS TAXPAYER on May 21, 1993, (Dept. Group Ex. No. 2) thus proving that the purchaser did not have a valid resale number at the time of the sales at issue as required by the statute. There is no other evidence of record showing that the sales were for resale. For these reasons the presumption that the sales at issue are not sales for resale is not rebutted.

The documentary evidence introduced by the taxpayer in support of the transactions with FICTITIOUS TAXPAYER consists of ten invoices dated October, November and December of 1991 (Taxpayer Group Ex. No. 9) and an undated and, therefore, deficient blanket resale certificate (Taxpayer Ex. No. 9a). FICTITIOUS TAXPAYER testified that she gave the certificate to the taxpayer with respect to the transactions at issue and that she did resell the items purchased. (Tr. pp. 64 & 65) The Department's records indicate that the resale number inserted on the resale certificate was issued to FICTITIOUS TAXPAYER on July 1, 1993, (Dept. Group Ex. No. 2) thus proving that the purchaser did not have a valid resale number at the time of the sales at issue as required by the statute. There is no other evidence of record showing that the sales were for resale. For these reasons the presumption that the sales at issue are not sales for resale is not rebutted.

The documentary evidence introduced by the taxpayer in support of the transactions with FICTITIOUS TAXPAYER consists of two invoices, one dated in November and the other in December of 1991. (Taxpayer Group Ex. No. 12) and an undated and, therefore, deficient blanket resale certificate. (Taxpayer Ex. No. 12a) FICTITIOUS TAXPAYER testified that she was not sure if she purchased the items at issue. (Tr. p. 79) She testified that she did recall making some purchases from taxpayer during November and December 1991 and that she sold some of the items but still had others. (Tr. at p. 80) Finally, she testified that she was not sure whether the purchases were for resale. (Tr. at p. 81) The Department's records indicate that the resale number inserted on the resale certificate was issued to FICTITIOUS TAXPAYER Harris on October 11, 1994, (Dept. Group Ex. No. 2) thus proving that the purchaser did not have a valid resale number at the time of the sales at issue as required by the statute. There is no other evidence of record showing that the sales were for resale. For these reasons the presumption that the sales at issue are not sales for resale is not rebutted.

The documentary evidence introduced by the taxpayer in support of the transactions with FICTITIOUS BUSINESS consists of an invoice dated October 9, 1991, an invoice dated December 11, 1991 (Taxpayer Group Ex. No. 23) and an undated and, therefore, deficient blanket resale certificate with the address obliterated showing FICTITIOUS BUSINESS as the purchaser. (Taxpayer Group Ex. No. 23a) FICTITIOUS TAXPAYER testified that she was in the jewelry business in 1991 under the name FICTITIOUS BUSINESS and that FICTITIOUS BUSINESS was incorporated in 1993. (Tr. pp. 148 & 150) She testified that she purchased the items on the invoices in question for resale and that she gave the blanket resale certificate to the taxpayer with respect to those transactions. (Tr. at p. 149) The Department's records indicate that the resale number inserted on the resale certificate was issued to FICTITIOUS BUSINESS,

Inc., on July 1, 1993, (Dept. Group Ex. No. 2) thus proving that the purchaser did not have a valid resale number at the time of the sales at issue as required by the statute. There is no other evidence of record showing that the sales were for resale. For these reasons the presumption that the sales at issue are not sales for resale is not rebutted.

The documentary evidence introduced by the taxpayer in support of the transactions with FICTITIOUS TAXPAYER, consists of seven invoices with various dates during November and December 1991 (Taxpayer Group Ex. No. 5), two invoices with dates in December 1993, (Taxpayer Group Ex. No. 5b) and an undated and, therefore, defective blanket resale exemption certificate. (Taxpayer Ex. No. 5a) The invoices selected by the Department's auditor and introduced into evidence by the taxpayer show FICTITIOUS TAXPAYER (Taxpayer's Group Ex. No. 5) and FICTITIOUS TAXPAYER or FICTITIOUS TAXPAYER (Taxpayer's Group Ex. No. 5b) as the purchaser. (Taxpayer Group Ex. No. 5b, Stip. Ex. No. 1) There is nothing in the record to indicate who FICTITIOUS TAXPAYER is or if he is registered with the Department. The resale certificate lists the purchasers as being FICTITIOUS TAXPAYERS. FICTITIOUS TAXPAYER testified that FICTITIOUS TAXPAYER is her husband. (Tr. p. 41) She testified that her husband purchased the items reflected in the transactions at issue for resale. (*Id.*) The Department's records indicate that the resale number inserted on the resale certificate was issued to ABC PHOTOGRAPHY on March 11, 1985, and deactivated on December 31, 1988, (Dept. Group Ex. No. 2) thus proving that the purchasers did not have a valid resale number at the time of the sales at issue as required by the statute. There is no other evidence of record showing that the sales were for resale. Because the resale certificate is undated and because none of the purchasers listed on the certificate or on the invoices had a valid resale

number at the time of sale, the presumption that the sales at issue were not sales for resale is not rebutted.

The documentary evidence introduced by the taxpayer in support of the transactions with FICTITIOUS TAXPAYER consists of eight invoices dated in October, November and December 1991 (Taxpayer Group Ex. No. 22) and an undated and, therefore, defective blanket resale certificate which does not show the purchaser's address, is unsigned and does not show a valid resale number. (Taxpayer Ex. No. 22a) FICTITIOUS TAXPAYER testified that she was in the jewelry business in 1991 operating her business under the name of FICTITIOUS BUSINESS. (Tr. p. 143) She testified further that she purchased the items listed on the invoices at issue from the taxpayer for resale and that she resold them to her customers. (Tr. at ¶ p. 144) Because the resale certificate is undated, unsigned, does not show the purchaser's address and the purchaser did not provide a resale number on the certificate or at the hearing it is not a valid resale certificate for the transactions at issue. For these reasons, the presumption that the transactions were not sales for resale is not rebutted.

The documentary evidence introduced by the taxpayer in support of the transaction with FICTITIOUS TAXPAYER consists of fourteen invoices dated in October, November and December 1991 for purchases of \$7,665.38 (Taxpayer Group Ex. No. 10) and an undated blanket resale certificate with an incomplete address. (Taxpayer Ex. No. 10a) The auditor treated these transactions as taxable because the names on the invoices and the resale certificate are somewhat different than the name under which the resale number on the certificate is registered with the Department. (Stip. ¶ Ex. No. 1) FICTITIOUS TAXPAYER testified that FICTITIOUS TAXPAYER is her husband, that she was in the jewelry business in 1991 (Tr. p. 66), that she purchased the items listed on the invoices at issue for resale (Tr. p. 68), and that she gave the

resale certificate to the taxpayer with respect to the transactions at issue. (Tr. p. 69) The Department's records indicate that the resale number inserted on the resale certificate was issued to FICTITIOUS TAXPAYER on March 16, 1988, and was still valid at the time of the hearing. (Dept. Group Ex. No. 2) thus proving that the purchaser had a valid resale number at the time of the sales at issue as required by the statute. The evidence of record with regard to these transactions is sufficient to rebut the presumption that the sales were not sales for resale.

The documentary evidence introduced by the taxpayer in support of the transactions with FICTITIOUS BUSINESS consists of three invoices and a blanket resale certificate. (Taxpayer Group Ex. No. 3) One of the invoices, dated November 25, 1991, lists the purchasers as FICTITIOUS BUSINESS. (*Id.*) The other two, dated November 23, 1991 and December 21, 1991, list FICTITIOUS TAXPAYER as the purchaser. (*Id.*) The resale certificate lists FICTITIOUS BUSINESS and FICTITIOUS TAXPAYER as the purchaser. The resale certificate lists an Indiana address for the purchasers and lists what may be an Indiana registration number. The resale certificate is invalid because it neither lists a resale number issued by the Department, nor does it contain a statement that the purchaser is an out-of-state purchaser who will sell only to purchasers located outside of Illinois as required by the regulations. 86 Admin. Code ch. I, § 130.1405 (b)(5).

The documentary evidence introduced by the taxpayer in support of the transactions with FICTITIOUS TAXPAYER consists of three invoices dated December 22, 23, and 31, 1993, which record the purchase of approximately forty items for \$2,175.09. (Taxpayer Group Ex. No. 11) There is also an undated and, therefore, deficient blanket resale exemption certificate. (Taxpayer Group Ex. No. 11a) FICTITIOUS TAXPAYER testified that FICTITIOUS TAXPAYER is his wife. (Tr. p. 74) He testified that he purchased the items listed on the

invoices in question for resale, that he sold them and that the resale certificate was given to the taxpayer with respect to those transactions. (Tr. pp. 73 & 74) The Department's records indicate that the resale number inserted on the resale certificate was issued to FICTITIOUS TAXPAYER on January 1, 1994, (Dept. Group Ex. No. 2) thus proving that the purchaser did not have a valid resale number at the time of the sales at issue as required by the statute. There is no other evidence of record showing that the sales were for resale. For these reasons the presumption that the sales at issue are not sales for resale is not rebutted.

The documentary evidence introduced by the taxpayer in support of the transaction with FICTITIOUS TAXPAYER, consists of an invoice dated December 22, 1993, for the purchase of four items totaling \$108.30, (Taxpayer Ex. No. 2) and an undated and, therefore, invalid blanket resale certificate. (Taxpayer Ex. No. 2a) FICTITIOUS TAXPAYER and her husband, FICTITIOUS TAXPAYER both testified. (Tr. p. 25) FICTITIOUS TAXPAYER testified that they were in the business of selling jewelry to other persons in 1993. (Tr. p. 26) He also testified that the undated blanket resale certificate was given to the taxpayer with respect to the transactions on the invoices at issue. (*Id.*) The Department's records indicate that the resale number inserted on the resale certificate was issued to FICTITIOUS BUSINESS on November 1, 1986 and deactivated on October 31, 1988, (Dept. Group Ex. No. 2) thus proving that the purchaser did not have a valid resale number at the time of the sales at issue as required by the statute. There is no other evidence of record showing that the sales were for resale. For these reasons the presumption that the sales at issue are not sales for resale is not rebutted.

The documentary evidence introduced by the taxpayer in support of the transactions with FICTITIOUS TAXPAYER, consists of two invoices dated November 16, 1993 (No. 56058) and December 4, 1993 (No. 56447) recording the purchase of 19 items for a total of \$748.88,

(Taxpayer Group Ex. No. 27) and an undated blanket resale certificate, which, therefore, is defective. (Taxpayer Ex. No. 27a) Invoice No. 56447 is the invoice the Department's auditor included in the sample. (Stip. ¶ Ex. No. 1) FICTITIOUS TAXPAYER testified that he was in the jewelry business during 1993, (Tr. p. 165) that he purchased the jewelry listed on the invoices at issue for resale and sold them to his customers. (Tr. p. 166) Finally, he testified that he gave the undated resale certificate to the taxpayer with respect to these transactions. (Tr. p. 167) The Department's records indicate that the resale number inserted on the resale certificate was issued to FICTITIOUS TAXPAYER on June 1, 1991, and that it was deactivated on September 30, 1991, (Dept. Group Ex. No. 2) thus proving that the purchaser did not have a valid resale number at the time of the sales at issue as required by the statute. There is no other evidence of record showing that the sales were for resale. For these reasons the presumption that the sale was not a sale for resale is not rebutted.

The documentary evidence introduced by the taxpayer in support of the transactions with FICTITIOUS TAXPAYER, consists of two invoices, one (No. 56443) dated December 4, 1993, for \$320.50 for the purchase of fourteen items, and the second invoice (No. 56766) dated December 18, 1993, for \$715.43 for the purchase of six items (Taxpayer Group Ex. No. 25) and an undated and, therefore, defective blanket resale certificate showing the purchaser to be FICTITIOUS BUSINESS c/o FICTITIOUS TAXPAYER. (Taxpayer Group Ex. No. 25a) FICTITIOUS TAXPAYER testified that she was in the jewelry business during 1993, (Tr. p. 158) that she purchased the jewelry listed on the invoices at issue for resale and sold them to her customers. (*Id.*) Finally, she testified that she gave the undated resale certificate to the taxpayer with respect to these transactions. (Tr. p. 159) The Department's records indicate that the resale number inserted on the resale certificate was issued to FICTITIOUS BUSINESS on July 15,

1992, and that it was deactivated on May 10, 1993, (Dept. Group Ex. No. 2) thus proving that the purchaser did not have a valid resale number at the time of the sales at issue as required by the statute. There is no other evidence of record showing that the sales were for resale. For these reasons the presumption that the sales at issue are not sales for resale is not rebutted.

The evidence of record with regard to the transactions listed in category 3, shows that every one of the resale certificates introduced by the taxpayer in support of its position is invalid for the transactions for which they were offered. No other documentary evidence was offered by the taxpayer in support of its position. The only evidence of record left is the oral testimony of taxpayer's employees and the taxpayer's oral testimony is not enough. Mel-Park Drugs, Inc., *supra*. Because the taxpayer has failed to provide any cogent documentary evidence in support of its claim that the transactions in category 3 are sales for resale the presumption that the transactions at issue were not sales for resale is not rebutted.

In the case of the transactions listed in category 4, the blanket exemption certificates admitted into evidence to support the allegation that the transactions were sales for resale are also defective. In all but one case, the purchasers did not have valid resale numbers on the dates that the transactions took place. The one exception is in the case of the transactions with FICTITIOUS TAXPAYER which consist of fourteen invoices dated in October, November and December 1991 for purchases of \$7,665.38. The blanket resale certificate provided by the purchasers was defective because it was undated. However, the Department's records showed that FICTITIOUS TAXPAYER had a valid registration number at the time the transactions took place and FICTITIOUS TAXPAYER testified that the certificate they gave to the taxpayer was with reference to the transactions at issue. This was sufficient evidence to rebut the presumption that the transactions were not sales for resale.

Issue No. 3

The third issue is whether the audit properly assessed transactions involving consignment sales, returns and bad debts. Since, the taxpayer did not address this issue at the hearing or in its brief, the Department's *prima facie* case must be made final as to this issue.

Wherefore, for the reasons set forth above, I recommend that the tax liability be recalculated after eliminating the following transactions that are not taxable:

1. the sales that are listed in Stip. Exhibits No. 2 and 3;
2. the sales listed in Stip. II:
3. the fourteen invoices for the transactions with FICTITIOUS TAXPAYER dated in October, November and December 1991 for purchases of \$7,665.38.

I also recommend that, as so adjusted, the Notices of Tax Liability be made final.

June 8, 1998

ENTER:

Administrative Law Judge